

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

SUSAN M. DAYTON,	)	No. CV-12-0127-CI
	)	
Plaintiff,	)	ORDER DENYING PLAINTIFF'S
	)	MOTION FOR SUMMARY JUDGMENT
v.	)	AND GRANTING DEFENDANT'S
	)	MOTION FOR SUMMARY JUDGMENT
CAROLYN W. COLVIN, Acting	)	
Commissioner of Social	)	
Security,	)	
	)	
Defendant.	)	

**BEFORE THE COURT** are cross-Motions for Summary Judgment. ECF No. 19, 24. Attorney D. James Tree represents Susan Dayton (Plaintiff); Special Assistant United States Attorney Jeffrey McClain represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 7. After reviewing the administrative record and briefs filed by the parties, the court **DENIES** Plaintiff's Motion for Summary Judgment, and directs entry of judgment for Defendant.

**JURISDICTION**

Plaintiff protectively filed for Supplemental Security Income (SSI) on January 26, 2007, alleging disability due to bipolar disorder, schizoaffective disorder, and post-traumatic stress

1 disorder (PTSD) with an onset date of January 31, 2001. Tr. 177,  
2 193. Benefits were denied initially and on reconsideration.  
3 Plaintiff timely requested a hearing before an administrative law  
4 judge (ALJ), which was held before ALJ R.S. Chester on August 10,  
5 2009, and a supplemental hearing was held on January 11, 2010. Tr.  
6 30. Plaintiff, who was represented by counsel, and vocation expert  
7 Daniel McKinney (VE) appeared and testified at the August 10  
8 hearing. Medical expert Donna M. Veraldi, Ph.D., and vocational  
9 expert Thomas Polsin testified at the January 11 hearing. Tr. 30.  
10 The ALJ denied benefits on February 12, 2010, and the Appeals  
11 Council denied review. Tr. 1-6, 30-39. The instant matter is  
12 before this court pursuant to 42 U.S.C. § 405(g).

13 **STATEMENT OF THE CASE**

14 At the time of the hearing, Plaintiff was 37 years old,  
15 unmarried, and living with her boyfriend. Plaintiff had two teenage  
16 children who were not living with her. Tr. 84. She has a high  
17 school education and past work experience as an automobile detailer,  
18 a lubrication servicer, a door assembler, a janitorial commercial  
19 cleaner, and a yard worker. Tr. 86-87. Plaintiff reports a  
20 traumatic childhood, adolescence, and young adulthood characterized  
21 by violence, instability, illegal activities, and drug abuse. She  
22 has an extensive criminal history with multiple incarcerations for  
23 theft and drug-related crimes. Tr. 79-81, 367. She has received  
24 inpatient and outpatient drug addiction treatment over the years.  
25 At the time of the hearing, Plaintiff reported she could not work  
26 because she becomes overwhelmed easily and she could not work at  
27 jobs that require physical exertion due to problems with her back  
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1 and a hernia that make it difficult for her to sit or stand for any  
2 length of time. Tr. 83, 84.

3 **ADMINISTRATIVE DECISION**

4 At step one, the ALJ found Plaintiff had not engaged in  
5 substantial gainful activity since the amended alleged onset date of  
6 January 11, 2007. Tr. 30, 55-56. At step two, he found Plaintiff  
7 has the severe impairment of bipolar disorder, schizoaffective  
8 disorder, post-traumatic stress disorder (PTSD), and personality  
9 disorder (borderline or antisocial). Tr. 32. He found evidence of  
10 Plaintiff's history of poly-substance abuse, degenerative disc  
11 disease, obesity, thyroid disorder, gastroesophageal reflux disease  
12 and hepatitis C did not establish more than minimal vocational  
13 limitations; therefore these impairments are non-severe. Tr. 33-34.  
14 At step three, the ALJ found Plaintiff's impairments, alone and in  
15 combination, do not meet or medically equal one of the listed  
16 impairments in 20 C.F.R., Appendix 1, Subpart P, Regulations No. 4  
17 (Listings). At step four, he determined Plaintiff has the residual  
18 functional capacity (RFC) to perform a full range of work at all  
19 exertional levels with the following nonexertional limitations: "The  
20 claimant cannot perform assembly-line work, should work away from  
21 the general public, and is limited to incidental contact with  
22 coworkers." Tr. 35.

23 In step four findings, the ALJ summarized Plaintiff's  
24 testimony, discussed medical opinions in the record, made  
25 credibility findings, and concluded Plaintiff's statements regarding  
26 the severity of her symptoms were not credible to the extent they  
27 were inconsistent with the RFC findings. Tr. 37-38. Based on VE  
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1 testimony and the record, the ALJ concluded Plaintiff could perform  
2 her past work as an automobile detailer, a lubrication servicer, a  
3 commercial janitor and a yard worker. Tr. 39. The ALJ determined  
4 Plaintiff was not disabled, as defined by the Social Security Act,  
5 from January 11, 2007, the date Plaintiff's SSI application was  
6 filed. *Id.*

#### 7 STANDARD OF REVIEW

8 In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9<sup>th</sup> Cir. 2001), the  
9 court set out the standard of review:

10 A district court's order upholding the Commissioner's  
11 denial of benefits is reviewed *de novo*. *Harman v. Apfel*,  
12 211 F.3d 1172, 1174 (9th Cir. 2000). The decision of the  
13 Commissioner may be reversed only if it is not supported  
14 by substantial evidence or if it is based on legal error.  
15 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999).  
16 Substantial evidence is defined as being more than a mere  
17 scintilla, but less than a preponderance. *Id.* at 1098.  
18 Put another way, substantial evidence is such relevant  
19 evidence as a reasonable mind might accept as adequate to  
20 support a conclusion. *Richardson v. Perales*, 402 U.S.  
21 389, 401 (1971). If the evidence is susceptible to more  
22 than one rational interpretation, the court may not  
23 substitute its judgment for that of the Commissioner.  
24 *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of*  
25 *Social Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999).

26 The ALJ is responsible for determining credibility,  
27 resolving conflicts in medical testimony, and resolving  
28 ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th  
Cir. 1995). The ALJ's determinations of law are reviewed  
*de novo*, although deference is owed to a reasonable  
construction of the applicable statutes. *McNatt v. Apfel*,  
201 F.3d 1084, 1087 (9th Cir. 2000).

It is the role of the trier of fact, not this court, to resolve  
conflicts in evidence. *Richardson*, 402 U.S. at 400. If evidence  
supports more than one rational interpretation, the court may not  
substitute its judgment for that of the Commissioner. *Tackett*, 180  
F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9<sup>th</sup> Cir. 1984).

1 Nevertheless, a decision supported by substantial evidence will  
2 still be set aside if the proper legal standards were not applied in  
3 weighing the evidence and making the decision. *Browner v. Secretary*  
4 *of Health and Human Services*, 839 F.2d 432, 433 (9<sup>th</sup> Cir. 1988). If  
5 there is substantial evidence to support the administrative  
6 findings, or if there is conflicting evidence that will support a  
7 finding of either disability or non-disability, the finding of the  
8 Commissioner is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-  
9 1230 (9<sup>th</sup> Cir. 1987).

#### 10 SEQUENTIAL EVALUATION

11 The Commissioner has established a five-step sequential  
12 evaluation process for determining whether a person is disabled. 20  
13 C.F.R. §§ 404.1520(a), 416.920(a); see *Bowen v. Yuckert*, 482 U.S.  
14 137, 140-42 (1987). In steps one through four, the burden of proof  
15 rests upon the claimant to establish a prima facie case of  
16 entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d  
17 920, 921 (9<sup>th</sup> Cir. 1971). This burden is met once a claimant  
18 establishes that a physical or mental impairment prevents her from  
19 engaging in her previous occupation. 20 C.F.R. §§ 404.1520(a),  
20 416.920(a). If a claimant cannot do her past relevant work, the ALJ  
21 proceeds to step five, and the burden shifts to the Commissioner to  
22 show that (1) the claimant can make an adjustment to other work; and  
23 (2) specific jobs exist in the national economy which claimant can  
24 perform. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v); *Kail v.*  
25 *Heckler*, 722 F.2d 1496, 1497-98 (9<sup>th</sup> Cir. 1984).

#### 26 ISSUES

27 The question is whether the ALJ's decision is supported by  
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1 substantial evidence and free of legal error. Plaintiff argues the  
2 ALJ erred when he: (1) improperly rejected opinions from Plaintiff's  
3 medical providers; (2) improperly rejected Plaintiff's subjective  
4 complaints; (3) failed to fully develop the record; and (4)  
5 erroneously relied on vocational expert testimony that Plaintiff  
6 could still perform her past work. ECF No. 20 at 10. Defendant  
7 responds the ALJ's decision is supported by substantial evidence and  
8 free of harmful legal error. ECF No. 25.

#### 9 DISCUSSION

##### 10 A. Credibility

11 Plaintiff contends the ALJ's vague assertions that her  
12 subjective complaints were not credible are legally insufficient.  
13 Specifically, she argues her ability to carry on daily activities  
14 and reports that she was cooperative during medical examinations are  
15 not enough to discredit her allegations of disabling impairments.  
16 ECF No. 20 at 16-17. However, even assuming these reasons are not  
17 legally sufficient, review shows the ALJ provided additional reasons  
18 that meet the Commissioner's burden to articulate "clear and  
19 convincing" reasons for discounting a claimant's subjective  
20 complaints where there is no affirmative evidence of malingering.  
21 If there is evidence of malingering, subjective complaints may be  
22 rejected with specific, cogent reasons. *Reddick v. Chater*, 157 F.3d  
23 715, 722 (9<sup>th</sup> Cir. 1998); *Lester v. Chater*, 81 F.3d 821, 834 (9<sup>th</sup> Cir.  
24 1995).

25 In addition to ordinary techniques of credibility evaluation,  
26 the ALJ may consider the following factors when weighing the  
27 claimant's credibility: the claimant's reputation for truthfulness;  
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1 inconsistencies either in his allegations of limitations or between  
2 his statements and conduct; daily activities and work record;  
3 testimony from physicians and third parties concerning the nature,  
4 severity, and effect of the alleged symptoms; an unexplained failure  
5 to follow treatment recommendations and testimony by the claimant  
6 "that appears less than candid." *Tommasetti v. Astrue*, 533 F.3d  
7 1035, 1039 (9<sup>th</sup> Cir. 2008); *Light v. Social Sec. Admin.*, 119 F.3d  
8 789, 792 (9<sup>th</sup> Cir. 1997); *Fair v. Bowen*, 885 F.2d at 597 n.5  
9 (ordinary techniques of credibility evaluation may be applied).

10 Here, the ALJ summarized Plaintiff's testimony that she is  
11 limited in her ability to work because her mental impairments make  
12 it difficult for her to concentrate, remember instructions, or  
13 handle much responsibility because she is easily overwhelmed.  
14 Although the ALJ made the general finding that these symptoms were  
15 not entirely credible, he did not reject totally Plaintiff's  
16 statements. Rather, he gave specific, "clear and convincing"  
17 reasons for discounting Plaintiff's self-reported limitations and  
18 symptoms and concluded she was able to perform work consistent with  
19 her residual functional capacity. *Id.*; see SSR 96-7p. Tr. 36-37.

20 The ALJ's reasoning is specific, clear and convincing, and  
21 supported by the record. For example, the ALJ found that although  
22 Plaintiff claimed an inability to handle much responsibility, the  
23 record shows she was observed as cooperative, appropriately groomed,  
24 and capable of responding to mental status examination and objective  
25 testing. This evidence, as well as evidence of her daily  
26 activities, is relevant to her credibility because it confirms that  
27 during the claimed period of disability, she demonstrated an ability

1 to function in a social setting and attend to daily hygiene/self  
2 care requirements. The ALJ also found her report of hallucinations  
3 and mental disorders were inconsistent with clinical findings of no  
4 observable signs of hallucinations, delusion, or thought disorders.  
5 Tr. 36.

6 The record shows mental health providers consistently noted she  
7 was not exhibiting the extreme symptoms claimed. See, e.g., Tr.  
8 261-62, 339, 458. The ALJ also referenced evidence of  
9 neuropsychological testing results showing no memory or cognitive  
10 impairments and professionals' observations that she was able to  
11 complete testing within average time. Tr. 36; see also Tr. 748 (new  
12 evidence). The referenced objective evidence is inconsistent with  
13 her self-reported severe limitations with memory and concentration.

14 Finally, the ALJ referenced other evidence that Plaintiff's  
15 self-reported limitations were inconsistent with her presentation;  
16 her medications were effective in controlling her severe symptoms;  
17 she had reported feeling well enough to volunteer or seek  
18 employment; and she was reporting feeling well and stable in recent  
19 counseling sessions. *Id.* Significantly, the ALJ reasoned that  
20 Plaintiff's history of criminal behavior (including incarceration  
21 for selling drugs) and drug abuse eroded her credibility.<sup>1</sup> Tr. 36-

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22  
23 <sup>1</sup> New evidence submitted to the Appeals Council by Plaintiff  
24 after the ALJ's decision was rendered shows that Plaintiff self-  
25 reported drug use (methamphetamine, cocaine, marijuana) to her  
26 counselor in 2009 (mushrooms), 2010 (cocaine) and 2011  
27 (methamphetamine). Tr. 747. This self-report is inconsistent with  
28 her statements at the hearing that she had been drug free since



37. These findings reflect "clear and convincing" reasons for discounting a claimant's subjective complaints. *Lester*, 81 F.3d at 834; see also *Taylor v. Commissioner of Social Sec. Admin.*, 659 F.3d 1228, 1234 (9<sup>th</sup> Cir. 2011); *Vasquez v. Astrue*, 572 F.3d 586, 591 (9<sup>th</sup> Cir. 2009); *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9<sup>th</sup> Cir. 2007); *Verduzco v. Apfel*, 188 F.3d 1087, 1090 (9<sup>th</sup> Cir. 1999) (claimant's inconsistencies and lack of candor about substance abuse support adverse credibility finding); *Swenson v. Sullivan*, 876 F.2d 683, 687 (9<sup>th</sup> Cir. 1989).

Contrary to Plaintiff's contention that the ALJ was "vague," the ALJ's credibility findings are sufficiently detailed for review and contain specific citations to supporting evidence in the record. The ALJ's credibility findings are supported by substantial evidence, "clear and convincing," and without legal error.

#### **B. Evaluation of Medical Opinions**

Plaintiff next argues the ALJ erred by improperly rejecting opinions from mental health provider Janet Roberson, M.Ed., and examining psychologists James Goodwin, Psy.D., and Thomas Rowe, Ph.D. ECF No. 20 at 12-16. The record shows Ms. Roberson was Plaintiff's treating mental health therapist beginning in 2007. See Tr. 546-87, 759. Drs. Goodwin and Rowe examined Plaintiff on

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2005. Tr. 81. The new evidence supports the ALJ's adverse credibility findings. In addition, in 2011, examining psychiatrist J. A. Janssen, M.D., noted no observable psychological distress, intact concentration and attention, and "pleasant and animated" presentation. He found "no active symptoms of psychosis." Tr. 748-5.

1 several occasions between 1998 and 2007. Tr. 299, 479, 646, All  
2 three providers assessed Plaintiff with marked and severe functional  
3 limitations over the years. Plaintiff contends the ALJ did not give  
4 valid reasons for disregarding these "marked" and "severe"  
5 limitations when assessing her final RFC and they should be credited  
6 as a matter of law. ECF No. 20 at 15-16. Plaintiff's argument is  
7 not persuasive.

8 Although the ALJ discussed these opinions and gave them little  
9 weight in his final RFC, he did not totally disregard the severity  
10 assessed. His final RFC reflects social functioning limitations  
11 that restrict her ability to perform significant non-exertional  
12 tasks: she cannot perform assembly-line work; she cannot work with  
13 the general public; and she cannot have more than incidental contact  
14 with coworkers. These limitations reasonably reflect the symptoms  
15 of her medically determinable mental impairments. Tr. 35-36.

16 In his explanation of the weight given medical opinions, the  
17 ALJ specifically noted that Ms. Roberson's assessment of moderate to  
18 marked cognitive limitations and moderate to severe social  
19 limitations is not supported by clinical findings. Rather, she  
20 relied on "personal interview and observation."<sup>2</sup> Tr. 38. Ms.  
21 Roberson is not an acceptable medical source, thus, her opinions may  
22 be rejected with specific, "germane" reasons. *Lewis v. Apfel*, 236

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23  
24 <sup>2</sup> The ALJ was not obliged to consider mental impairments  
25 diagnosed by Ms. Roberson because she is not an acceptable medical  
26 source as defined by the Regulations. Therefore she is unqualified  
27 to establish a medically determinable impairment. 20 C.F.R.  
28 § 416.913(a),(d).

1 F.3d 503, 511 (9<sup>th</sup> Cir. 2001); *Nguyen v. Chater*, 100 F.3d 1462, 1467  
2 (9<sup>th</sup> Cir. 1996). In addition, the ALJ properly considered Ms.  
3 Roberson's long term treatment relationship with Plaintiff as  
4 directed in the Commissioner's policy ruling, SSR 06-03p, but found  
5 her opinions were not supported with clinical findings. Tr. 38. An  
6 ALJ is not required to accept an opinion by any provider that is  
7 brief, conclusory, and unsupported by objective evidence. *Bayless*  
8 *v. Barnhart*, 427 F.3d 1211, 1216 (9<sup>th</sup> Cir. 2005). Consistent with  
9 the ALJ's reasoning, review of Ms. Roberson's treatment notes show  
10 very few objective observations - rather her notes consist of  
11 documenting Plaintiff's subjective complaints or no-shows. As  
12 discussed above, the ALJ's reasons for discounting Plaintiff's self-  
13 report are "clear and convincing" and supported by the record. It  
14 was, therefore, not error to give little weight to Ms. Roberson's  
15 treatment notes based on subjective report. The ALJ properly  
16 considered the entire record, not just Ms. Roberson's conclusory  
17 report, in deciding the weight to give her opinions. His evaluation  
18 of Ms. Roberson's opinions in the context of the entire record is  
19 legally sufficient.

20 Regarding the examining psychologist opinions, the ALJ gave  
21 Dr. Goodwin's assessment of marked and severe social functional  
22 limitations little weight because they were inconsistent with other  
23 medical evidence showing her symptoms were controlled with  
24 medications. He also found these limitations were inconsistent  
25 with Dr. Goodwin's own notes that her medications were effective.  
26 Tr. 38, 649. These are specific and legitimate reasons to discount  
27 Dr. Goodwin's opinion. See *Tommasetti*, 533 F.3d at 1040 (opinion  
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1 not supported by source's medical records and/or objective data);  
2 *Bayliss*, 427 F.3d at 1216. Other evidence in the record shows  
3 Plaintiff self-reported doing well, and that she was "overall  
4 happy" over the years, and her medication regime was stabilizing  
5 her symptoms. See, e.g., Tr. 285, 465, 693-95 (2008 provider  
6 observation indicating stress in her life but "overall happy" and  
7 "good mood"). The ALJ's properly viewed the entire record in  
8 evaluating Dr. Goodwin's opinions and his reasons for discounting  
9 severe and marked social limitations are legally sufficient.

10 Dr. Rowe examined Plaintiff one time in 2007 for state  
11 benefits, Tr. 481-89, and in his report summarized her medical and  
12 social history (based primarily on self-report). Tr. 481-84, 488.  
13 Objective testing administered by Dr. Rowe did not show significant  
14 memory impairment or cognitive dysfunction. Tr. 488. He noted she  
15 was receiving counseling and medication for her symptoms and  
16 commented that she was receiving state assistance and was not  
17 likely to return to work in the foreseeable future. Plaintiff  
18 contends this statement should have been given more weight.  
19 However, the ALJ reasonably interpreted Dr. Rowe's statement as not  
20 being a medical opinion or a functional assessment that could be  
21 used to assess disability. Tr. 38, 488. He also properly reasoned  
22 that the final determination of Plaintiff's ability to work remains  
23 the responsibility solely of the ALJ and is based on medical and  
24 vocational factors in the entire record, as well as the ALJ's  
25 credibility determination. 20 C.F.R. § 416.946(c); SSR 96-5p. The  
26 ALJ was not obliged to give special significance to Dr. Rowe's  
27 speculative opinion regarding Plaintiff's return to work. 20

1 C.F.R. § 416.927(e).

2 In sum, the ALJ properly considered all the evidence,  
3 including medical and expert vocational testimony in determining  
4 Plaintiff still had the capacity to perform past jobs. 20 C.F.R.  
5 §§ 416.945, .946. Although Plaintiff may not agree with the final  
6 decision, the court may not disturb the Commissioner's conclusions  
7 where, as here, they represent a rational interpretation of the  
8 record in its entirety. *Tackett*, 180 F.3d at 1098.

9 **C. Duty to Develop the Record**

10 Plaintiff argues remand is necessary to develop the record  
11 regarding her physical impairments, specifically back pain and  
12 obesity, and how those conditions impact her ability to perform  
13 physical work.

14 An ALJ's duty to develop the record is triggered only when  
15 there is ambiguous evidence or when the record is inadequate to all  
16 for proper evaluation of evidence. 20 C.F.R. § 416.945 (a)(3).  
17 *Mayes v. Massanari*, 276 F.3d 453, 459-60 (9<sup>th</sup> Cir. 2001). Here, the  
18 ALJ properly discussed medical evidence of physical problems and  
19 found Plaintiff's back problems and obesity were not severe  
20 impairments that more than minimally restricted her ability to  
21 work. Tr. 33. As noted by the ALJ, Plaintiff did not claim  
22 physical impairments in her application for benefits. *Id.* At the  
23 hearing, Plaintiff's representative stated that the onset of  
24 physical problems was recent and there was little to no evidence  
25 of physical limitations. Tr. 84-85. Plaintiff points to no  
26 ambiguity in the ALJ's summary of the evidence or finding of non-  
27 severity.

1 In addition, Plaintiff presented imaging reports, physical  
2 therapy reports, and progress notes from her physician that are  
3 adequate to evaluate Plaintiff's exertional abilities. Imaging  
4 shows only mild degenerative disease in the spine and Plaintiff's  
5 providers make no findings of significant restriction in her  
6 movement. See Tr. 666-712. Because Plaintiff makes no showing  
7 that her obesity would restrict her in the performance of her past  
8 work, the ALJ is not required to seek additional evidence.  
9 Plaintiff's claim that the ALJ erred by not further developing the  
10 record fails.

11 **D. Step Five**

12 Because the ALJ's evaluation of the evidence is supported by  
13 substantial evidence in the record, and his final RFC determination  
14 is consistent with that evidence, the ALJ properly relied on  
15 vocational expert testimony based on the ALJ's hypothetical  
16 individual. No severe physical impairments were established by the  
17 medical evidence, and as discussed above, the ALJ was not required  
18 to seek additional evidence. The Commissioner's final RFC  
19 determination is supported by substantial medical evidence and  
20 credible testimony consistent with the evidence and is, therefore,  
21 conclusive. Accordingly,

22 **IT IS ORDERED:**

23 1. Plaintiff's Motion for Summary Judgment, **ECF No. 19**, is  
24 **DENIED.**

25 2. Defendant's Motion for Summary Judgment, **ECF No. 24**, is  
26 **GRANTED.**

27 The District Court Executive is directed to file this Order  
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1 and provide a copy to counsel for Plaintiff and Defendant. Judgment  
2 shall be entered for **Defendant**, and the file shall be **CLOSED**.

3 DATED August 1, 2013.

4  
5 S/ CYNTHIA IMBROGNO  
6 UNITED STATES MAGISTRATE JUDGE  
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